

**CEQA FINDINGS OF FACT  
AND  
STATEMENT OF OVERRIDING CONSIDERATIONS**

**For the Organochlorine Compounds Total Maximum Daily Loads  
for San Diego Creek, Upper Newport Bay and Lower Newport  
Bay  
Substitute Environmental Document**

**September 7, 2007**

## **I. Introduction**

A Substitute Environmental Document (SED) (July 25, 2007) was prepared by Santa Ana Regional Water Board staff to evaluate the potential adverse environmental effects of the reasonably foreseeable methods of compliance with Regional Board staff's recommended organochlorine compounds Total Maximum Daily Loads (TMDLs) for San Diego Creek, Upper Newport Bay and Lower Newport Bay. This SED describes and was prepared in conformance with applicable requirements for compliance with the California Environmental Quality Act (CEQA) (Public Resources Code, Sec. 21000 *et seq.*) and the CEQA Guidelines (California Code of Regulations, tit. 14, Sec. 15000 *et seq.*) These findings have been prepared also to comply with the requirements of CEQA.

## **II. Project Description**

The project entails the adoption of a Basin Plan amendment to incorporate organochlorine compounds TMDLs for San Diego Creek, Upper Newport Bay and Lower Newport Bay and the implementation of these TMDLs. The amendment includes the implementation plan.

Based on findings of impairment of water quality standards due to certain organochlorine compounds in San Diego Creek (DDT and toxaphene), Upper Newport Bay (DDT, chlordane, PCBs) and Lower Newport Bay (DDT, chlordane and PCBs), these waterbody-pollutant combinations are included on the state and USEPA-approved 2004-2006 Clean Water Act Section 303(d) list for California. Per the Clean Water Act and implementing regulations, placement on the 303(d) list triggers the development and implementation of TMDLs to correct the impairment.

Based on earlier 303(d) listings, in 2002, USEPA established toxic substance TMDLs for San Diego Creek, Upper Newport Bay and Lower Newport Bay. USEPA's TMDLs included the organochlorine compounds identified above, as well as certain other organochlorine compounds. The organochlorine compound TMDLs recommended by Regional Board staff would supplant those established by the USEPA upon their approval by the state and USEPA.<sup>1</sup>

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<sup>1</sup> As a matter of information, in the absence of adoption and approval of the Regional Board's TMDLs, the Board must implement the organochlorine compounds TMDLs established by USEPA. The USEPA TMDLs do not include an implementation plan. Accordingly, the Regional Board would employ best professional judgment to determine the requirements, including permit limitations, to be specified for responsible parties to implement the USEPA TMDLs. In determining the appropriate requirements, the Regional Board must assure that other relevant regulations, for example, the established Sediment TMDL for the Newport Bay/San Diego Creek watershed, are implemented as well.

As noted above, the TMDLs recommended by Regional Board staff include an implementation plan that identifies specific actions to be taken by the Regional Board and dischargers of covered pollutants in the watershed. The implementation plan also establishes compliance schedules for the completion of the specified actions and for ultimate compliance with the TMDLs.

The purpose of a TMDL, including the organochlorine compounds TMDLs, is to achieve requisite reduction of the inputs of the pollutant(s) causing impairment such that water quality standards are achieved. Water quality standards include beneficial uses and narrative and numeric water quality objectives. It is required by law and in the public interest to implement the organochlorine compounds TMDLs to assure that uses of the affected waterbodies for aquatic and terrestrial wildlife, including species that are or may be listed by state and/or federal agencies as endangered or threatened, are protected. Implementation of the TMDLs is also necessary to assure the protection of the health of human consumers of fish and other organisms that may contain one or more of the organochlorine compounds addressed by the recommended TMDLs.

The technical basis for and derivation of the proposed TMDLs and their individual components, including the numeric targets, wasteload allocations and load allocations, are described in detail in the November 17, 2006 TMDL technical report prepared by Regional Board staff and in supplemental staff reports (April 20, 2007, September 7, 2007). The implementation plan for the TMDLs is also described in these reports.

### **III. Background**

A detailed discussion of the environmental and regulatory setting for the organochlorine compounds TMDLs is provided in Section 3 of the July 25, 2007 Substitute Environmental Document.

### **IV. Findings Required Under CEQA**

Public Resources Code section 21002 provides that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available that would *substantially lessen* the significant environmental effects of such projects. (Emphasis added.) The same statute states that the procedures required by CEQA are intended to assist public agencies in systematically identifying both the significant effects of projects and the feasible alternatives or feasible mitigation measures that will *avoid* or *substantially lessen* such significant effects. (Emphasis added.) Public Resources Code section 21002 further states in the event that specific economic, social, or other conditions make infeasible such project alternatives or such

mitigation measures, individual projects may be approved in spite of one or more significant effects. In this case, for each significant environmental effect identified in the environmental document (here, the SED, which includes an environmental checklist) for a proposed project, the approving agency must issue a written finding reaching one or more of three permissible conclusions. The first such finding is that changes or alterations have been required in, or incorporated into, the project that avoid or substantially lessen the significant environmental effect as identified in the environmental document. (CEQA Guidelines,<sup>2</sup> Sec. 15091(a)(1)). The second permissible finding is that such changes or alterations are within the responsibility and jurisdiction of another public agency and not the agency making the finding. Such changes have been adopted by such other agency or can and should be adopted by such other agency. (CEQA Guidelines, Sec. 15091(a)(2).) The third potential conclusion is that specific economic, legal, social, technological, or other considerations make infeasible the mitigation measures or project alternatives identified in the environmental document (CEQA Guidelines, Sec. 15091(a)(3).) Public Resources Code section 21061.1 defines “feasible” to mean capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social and technological factors. CEQA Guidelines section 15364 adds another factor: legal considerations. (See also *Citizens of Goleta Valley v. Board of Supervisors* (*Goleta II* (1990) 52 Cal.3d 553, 565.) The concept of feasibility also encompasses the question of whether a particular alternative or mitigation measure promotes the underlying goals and objectives of a project. (*City of Del Mar v. City of San Diego* (1982) 133 Cal.App.3d 410, 417.)

The CEQA Guidelines do not define the difference between avoiding a significant environmental effect and merely substantially lessening such an effect. The meaning of these terms must be gleaned from the other contexts in which the terms are used. Public Resources Code section 21081, on which CEQA Guidelines section 15091 is based, uses the term “mitigate” rather than “substantially lessen.” The CEQA Guidelines therefore equate mitigating with substantially lessening. Such an understanding of the statutory term is consistent with the policies underlying CEQA, which include the policy that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available that would substantially lessen the significant environmental effects of such projects. (Pub. Resources Code, sec. 21002.)

For purposes of these findings, the term “avoid” refers to the effectiveness of one or more mitigation measures to reduce an otherwise significant effect to a less than significant level. In contrast, the term “substantially lessen” refers to the effectiveness of such measure or measures to substantially reduce the severity of a significant effect, but not to reduce that effect to a less than significant level.

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<sup>2</sup> The CEQA Guidelines are found at Title 14, California Code of Regulations, Section 15000 et seq.

These interpretations appear to be mandated by the holding in *Laurel Hills Homeowners Association v. City Council* (1978) 83 Cal.App.3d 515, 519-527, in which the Court of Appeal held that an agency had satisfied its obligation to substantially lessen or avoid significant effects by adopting numerous mitigation measures, not all of which rendered the significant impacts in question (e.g., the aesthetic and visual character) less than significant.

In short, CEQA requires that the lead agency adopt mitigation measures or alternatives, where feasible, to substantially lessen or avoid significant environmental impacts that would otherwise occur. Project modification or alternatives are not required, however, where such changes are infeasible or where the responsibility for modifying the project lies with some other agency. (CEQA Guidelines, Sec. 15091(a), (b).)

Although CEQA Guidelines section 15091 requires only that approving agencies specify that a particular significant effect is avoided or substantially lessened, these findings, for purposes of clarity, in each case will specify whether the effect in question has been reduced to a less than significant level, or has simply been substantially lessened but remains significant.

## **V. Significant Effects and Mitigation Measures**

The Substitute Environmental Document (SED) identifies environmental impacts according to their characterization in the environmental checklist: (1) potentially significant; (2) less than significant with mitigation incorporation; (3) less than significant; and (4) no impact.

Potentially significant impacts. These are impacts that are potentially significant, but not completely mitigable. While, as described in the discussion of each of these impacts in the SED, mitigation measures can be employed to substantially lessen these effects, the effects cannot be wholly avoided (i.e., reduced to less than significant levels). These impacts are also known as “significant and unavoidable” impacts. These effects are outweighed by overriding considerations in favor of the project as set forth in Section VII, below.

Less than significant with mitigation incorporation. These are potentially significant impacts that can be reduced to less than significant as the result of the incorporation of mitigation measures. Again, these mitigation measures are described in the SED.

Less than significant impacts and those described as “no impact” are not required to be included in the Findings per the CEQA Guidelines.

This Section presents the Regional Board's findings with respect to the environmental effects identified as (1) potentially significant and (2) less than significant with mitigation incorporation. Applicable references to the checklist and description of mitigation measures in the SED are provided. Both this document and the SED are integral components of these findings of fact.

### **Checklist: I. Aesthetics**

Impacts on Aesthetics will be significant if they result in any of the following:

- a) Have a substantial adverse effect on a scenic vista;
- b) Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings within a state scenic highway;
- c) Substantially degrade the existing visual character or quality of the site and its surroundings;
- d) Create a new source of substantial light or glare that would adversely affect day or nighttime views in the area.

Project Impacts: Less than significant with mitigation incorporation (a, b, c and d)

Mitigation: Discussion of the aesthetic impacts of reasonably foreseeable methods of TMDL compliance and mitigation measures is provided on pages 24-27 of the SED. Planning, design, and siting of structural BMPs implemented to comply with the TMDLs, the use of vegetative or other buffers, proper timing of construction and operation of structural BMPs, shielding of light fixtures and low-intensity, directional lighting and rotational timing of light fixtures can and should reduce these impacts to less than significant levels.

**Finding:** Mitigation measures are available to reduce aesthetics impacts to less than significant. These mitigation measures can and should be required by local lead and responsible agencies through their project-specific CEQA, planning, project approval and/or project permitting processes.

### **Checklist II. Agriculture Resources**

Impacts on Agriculture Resources will be significant if they result in any of the following:

- a) Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use;
- b) Conflict with existing zoning for agricultural use, or a Williamson Act contract;

- c) Involve other changes in the existing environment that, due to their location or nature, could result in conversion of Farmland, to non-agricultural use.

Project Impacts: No impact (a, b and c).

Mitigation: None necessary. See SED, pages 27 and 28.

**Finding:** Under CEQA, no mitigation measures are required for impacts that are less than significant, or where there is no impact. (Pub. Resources Code, Sec. 21002; CEQA Guidelines, Sec. 15091.)

### **Checklist: III. Air Quality**

Impacts on Air Quality will be significant if they result in any of the following:

- a) Conflict with or obstruct implementation of the applicable air quality plan;
- b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation;
- c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors);
- d) Expose sensitive receptors to substantial pollutant concentrations;
- e) Create objectionable odors affecting a substantial number of people.

Project Impacts: Potentially significant (a, b, c and d); Less than significant with mitigation incorporation (e).

Mitigation: Discussion of the air quality impacts of the reasonably foreseeable methods of compliance with these TMDLs and mitigation measures is provided on pages 28-31 of the SED. Use of the following can and should reduce the impacts identified in a through d, but these impacts may remain significant: low-emission vehicles/equipment, soot reduction traps/diesel particulate filters, emulsified diesel fuel; vacuum-assisted street sweepers; design of BMPs to minimize the need for maintenance; proper vehicle maintenance; use of moisture control measures to reduce fugitive dust. Use of these measures, coupled with design and operation measures intended to prevent stagnation of any standing water and devices to reduce odors (e.g., filters, aeration devices, odor-suppressing chemical additives) can and should reduce the odor-related impacts (e) to less than significant.

**Finding:** While mitigation measures can be employed to substantially lessen the effects identified in a, b, c and d, the effects cannot be wholly avoided (i.e., reduced to less than significant levels). However, these effects are outweighed by overriding considerations (see Section VII). Mitigation measures are available

to reduce impacts resulting from objectionable odors that affect a substantial number of people (e) impacts to less than significant. These mitigation measures can and should be required by local lead and responsible agencies through their project-specific CEQA, planning, project approval and/or permitting processes.

#### **Checklist: IV. Biological Resources**

Impacts on Biological Resources will be significant if they result in any of the following:

- a) Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service;
- b) Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, and regulations, or by the California Department of Fish and Game or US Fish and Wildlife Service;
- c) Have a substantial adverse effect on federally protected wetlands as defined by Section 404 of the Clean Water Act (including, but not limited to, marsh, vernal pool, coastal, etc.) through direct removal, filling, hydrological interruption, or other means;
- d) Interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites;
- e) Conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance;
- f) Conflict with the provisions of an adopted Habitat Conservation Plan, Natural Community Conservation Plan, or other approved local, regional, or state habitat conservation plan.

Project Impacts: Potentially significant (a); Less than significant with mitigation incorporation (b, c, d and f). (No impact (e)).

Mitigation: The biological resources impacts of reasonably foreseeable methods of compliance with the TMDLs and mitigation measures are discussed on pages 31-35 of the SED. Each project that may be considered by responsible dischargers to comply with the TMDLs will be subject to detailed, project-specific CEQA and, where required, National Environmental Policy Act (NEPA) review by responsible agencies, including the Regional Board, Department of Fish and Game and the U.S. Fish and Wildlife Service. Prior consultation with the Department of Fish and Game and the U.S. Fish and Wildlife Service, through the pre-project planning and/or CEQA-NEPA processes, and implementation of avoidance/mitigation measures imposed by those agencies, will reduce the effects of TMDL control measures on special status species. However, the



finding of potential significance is required when special status species may be affected. Proper planning, design and implementation of methods of compliance, in coordination with the Department of Fish and Game, U.S. Fish and Wildlife Service and Regional Board (in response to CEQA, Clean Water Act (CWA) Section 401 water quality certification/waste discharge requirements) and with established conservation plans, will assure that the potential effects identified in b, c, d and f are reduced to less than significant levels.

**Finding:** Mitigation measures are available to reduce the effects on special status species (a) identified by the Department of Fish and Game and the U.S. Fish and Wildlife Service through pre-project planning and/or CEQA-NEPA processes. To the extent that the methods of TMDL compliance employed necessitate CWA Sec. 401 certification and issuance of waste discharge requirements, the Regional Board shall incorporate appropriate avoidance and mitigation requirements based on consultation with the Department of Fish and Game and U.S. Fish and Wildlife Service. The Regional Board will also serve as a responsible agency for project-specific CEQA analyses and identify measures necessary to mitigate the water quality standards impacts of proposed compliance projects, including impacts on special status species and other biological resources. To the extent that any impacts remain significant even with mitigation, these impacts are outweighed by overriding considerations (see Section VII). Mitigation measures can and should also be required by the Department of Fish and Game and U.S. Fish and Wildlife Service for impacts on special status species.

Similarly, the biological resource effects identified in b, c, d and f can be mitigated to less than significant levels. Appropriate mitigation requirements will be specified in CWA 401 certifications and waste discharge requirements issued by the Regional Board as necessary and appropriate to regulate the implementation of control measures. Appropriate mitigation measures will also be identified by the Regional Board in project-specific CEQA reviews to address potential water quality standards impacts, including impacts on biological resources. The Department of Fish and Game and U.S. Fish and Wildlife Service can and should also require the implementation of appropriate avoidance and mitigation methods through their permitting, consultation and CEQA-NEPA processes. Local agencies with relevant plans, policies or ordinances can and should assure that the methods of compliance conform to those plans, policies and ordinances and require appropriate avoidance and mitigation, where necessary. These actions can and should be taken through the local agencies through their project-specific CEQA, planning, project approval and/or permitting processes.

For checklist item (e), the project will have no impact. Under CEQA, no mitigation measures are required for impacts that are less than significant, or

where there is no impact. (Pub. Resources Code, Sec. 21002; CEQA Guidelines, Sec. 15091.)

### **Checklist V. Cultural Resources**

Impacts on cultural resources will be significant if they result in any of the following:

- a) Cause a substantial adverse change in the significance of a historical resource as defined in CCR Tit. 14 15064.5;
- b) Cause a substantial adverse change in the significant of an archaeological resource pursuant to CCR Tit. 14 15064.5;
- c) Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature;
- d) Disturb any human remains, including those interred outside of formal cemeteries.

Project Impacts: Less than significant with mitigation incorporation (a, b, c and d)

Mitigation: The cultural resource impacts of reasonably foreseeable methods of compliance with the TMDLs and mitigation are discussed on pages 35 and 36 of the SED. Proper planning, site-design and site selection can reduce these effects to less than significant levels.

**Finding:** Mitigation measures are available to reduce cultural resources impacts to less than significant. Local agencies can and should require site-relocation and/or alternative project design/implementation to mitigate these potential impacts. These actions can be taken through the local agencies' project-specific CEQA, planning, project approval and/or permitting processes.

### **Checklist VI. Geology and Soils**

Impacts on geology and soils will be significant if they result in any of the following:

- a) Expose people or structures to potential substantial adverse effects, including the risk of loss, injury, or death involving:
  - i) Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault? Refer to Division of Mines and Geology Special Publication 42.
  - ii) Strong seismic ground shaking
  - iii) Seismic-related ground failure, including liquefaction
  - iv) Landslides

- b) Result in substantial soil erosion or the loss of topsoil;
- c) Be located on a geologic unit or soil that is unstable, or that would become unstable as a result of the project, and potentially result in on-site or off-site landslide, lateral spreading, subsidence, liquefaction or collapse;
- d) Be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial risks to life or property;
- e) Have soils incapable of adequately supporting the use of septic tanks or alternative waste water disposal systems where sewers are not available for the disposal of waste water.

Project Impacts: Less than significant with mitigation incorporation (b, c and d)  
(No impact: a and e).

Mitigation: The geology and soils impacts of reasonably foreseeable methods of compliance with the TMDLs and mitigation are discussed on pages 36-38 of the SED. Local and state requirements for sediment control measures for construction activities are in place as the result of NPDES permits issued by the State Water Board/Regional Water Board (general construction permit/MS4 permit). Proper siting (to ensure that structural BMPs are not employed in areas subject to unstable soil conditions), engineering design and operation of control measures, coupled with pre-project geotechnical investigations and groundwater level monitoring where necessary to determine site suitability, can reduce these impacts to less than significant levels.

For checklist items (a) and (e), the project will have no impact. Under CEQA, no mitigation measures are required for impacts that are less than significant, or where there is no impact. (Pub. Resources Code, Sec. 21002; CEQA Guidelines, Sec. 15091.)

**Finding:** Mitigation measures are available to reduce geology and soils impacts to less than significant. Local agencies can and should require proper evaluation of control measure site location and design and implementation of alternatives as necessary as part of their project-specific CEQA, planning, project approval and/or permitting processes. Local agencies and the Regional Board shall adopt new requirements, revise existing requirements as necessary and enforce existing and new/revised requirements for the implementation of effective erosion and sedimentation control measures.

#### **Checklist: VII. Hazards and Hazardous Materials**

Impacts related to hazards and hazardous materials will be significant if they result in any of the following:

- a) Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials;

- b) Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment;
- c) Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school;
- d) Be located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment;
- e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, result in a safety hazard for people residing or working in the project area;
- f) For a project within the vicinity of a private airstrip, result in a safety hazard for people residing or working in the project area;
- g) Impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan;
- h) Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands.

Project Impacts: Less than significant with mitigation incorporation (a, e, f and g); (Less than significant (b and h); No impact c and d).

Mitigation: The hazards and hazardous materials-related impacts of the reasonably foreseeable methods of compliance with the TMDLs and mitigation are described on pages 38-42 of the SED. These impacts can be reduced to less than significant levels by one or more of the following: proper handling, storage and disposal procedures for hazardous materials; pre-project site characterization and consideration of project alternatives, including alternative sites and project designs that would avoid or minimize the exposure of hazardous materials; provision of specific materials/equipment storage and parking areas; use of temporary streets to reduce traffic obstruction; proper timing of transport of oversize trucks and equipment.

**Finding:** Mitigation measures are available to reduce impacts related to hazards and hazardous materials to less than significant levels. These mitigation measures can and should be required by local lead and responsible agencies through their project-specific CEQA, planning, project approval and/or permitting processes. The Regional Board will also identify appropriate mitigation measures to protect water quality standards through project-specific CEQA reviews.

For checklist items (b), (c), (d), and h, the project will have a less than significant impact or no impact. Under CEQA, no mitigation measures are required for impacts that are less than significant, or where there is no impact. (Pub. Resources Code, Sec. 21002; CEQA Guidelines, Sec. 15091.)

### **Checklist: VIII. Hydrology and Water Quality**

Hydrology and water quality Impacts will be significant if they result in any of the following:

- a) Violate any water quality standards or waste discharge requirements;
- b) Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or planned uses for which permits have been granted);
- c) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, in a manner that would result in substantial erosion or siltation on-site or off-site;
- d) Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river, or substantially increase the rate or amount of surface runoff in a manner which would result in flooding on-site or off-site;
- e) Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff;
- f) Otherwise substantially degrade water quality;
- g) Place housing within a 100-year flood hazard area as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map;
- h) Place within a 100-year flood hazard area structures that would impede or redirect flood flows;
- i) Expose people or structures to a significant risk of loss, injury or death involving flooding, including flooding as a result of the failure of a levee or dam;
- j) Inundation by seiche, tsunami, or mudflow.

Project Impacts: Less than significant with mitigation incorporation (a,c,d,f,i,j);  
Less than significant (b); No impact (e,g,h).

Mitigation: The hydrology and water quality impacts of the reasonably foreseeable methods of compliance with the TMDLs and mitigation are described on pages 42-46 of the SED. These impacts can be reduced to less than significant with the implementation of one or more of the following: standard BMPs (e.g., silt fences, installation of small-scale retention basins, construction of swales, proper use of chemical flocculating agents such as polyacrylamide monomer (PAM) to hold sediment in place; proper siting, design and operation of structural BMPs; adequate consideration of potential seismic effects in planning, design and construction of large-scale structural BMPs.

**Finding:** Mitigation measures are available to reduce hydrology and water quality impacts to less than significant levels. These mitigation measures can and should be required by local lead and responsible agencies through their project-specific CEQA, planning, project approval and/or permitting processes. The Regional Board shall adopt conditions in CWA Sec. 401 certifications (where applicable), issue new waste discharge requirements, revise existing waste discharge requirements as necessary and enforce existing/new/revised requirements to assure the implementation of effective erosion and sedimentation control measures and compliance with 401 certification conditions/waste discharge requirements. The Regional Board will also identify appropriate mitigation measures as needed through the project-specific CEQA review process.

For checklist items (b), (e), (g) and (h) the project will have a less than significant impact or no impact. Under CEQA, no mitigation measures are required for impacts that are less than significant, or where there is no impact. (Pub. Resources Code, Sec. 21002; CEQA Guidelines, Sec. 15091.)

#### **Checklist: IX. Land Use and Planning**

Impacts on land use and planning will be significant if they result in any of the following:

- a) Physically divide an established community;
- b) Conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the project (including, but not limited to the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect;
- c) Conflict with any applicable habitat conservation plan or natural community conservation plan.

Project Impacts: No impact (a); Less than significant (b and c)

Mitigation: None necessary. See SED, pages 46 and 47.

**Finding:** Under CEQA, no mitigation measures are required for impacts that are less than significant, or where there is no impact. (Pub. Resources Code, Sec. 21002; CEQA Guidelines, Sec. 15091)

#### **Checklist: X. Mineral Resources**

The impacts on mineral resources will be significant if they result in any of the following:

- a) Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state;

- b) Result in the loss of availability of a locally important mineral resource recovery site delineated on a local general plan, specific plan or other land use plan.

Project Impacts: Less than significant with mitigation incorporation (a and b)

Mitigation: The mineral resources impacts of the reasonably foreseeable methods of compliance with the TMDLs and mitigation are described on pages 47 and 48 of the SED. Impacts to mineral resources can be avoided or reduced by proper planning, site design and consideration/selection of alternative locations.

**Finding:** Mitigation measures are available to reduce mineral resource impacts to less than significant levels. These mitigation measures can and should be required by local lead and responsible agencies through their CEQA, planning, project approval and/or permitting processes.

#### **Checklist: XI. Noise**

Noise impacts will be significant if they result in any one of the following:

- a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies;
- b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels;
- c) A substantial permanent increase in ambient noise levels in the project vicinity above levels existing without the project;
- d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project;
- e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, exposure of people residing or working in the project area to excessive noise levels;
- f) For a project within the vicinity of a private airstrip, exposure of people residing or working in the project area to excessive noise levels.

Project Impacts: Potentially significant (a, b, d, e and f). No impact (c).

Mitigation: The noise impacts of the reasonably foreseeable methods of compliance with the TMDLs and mitigation are discussed on pages 48-50 of the SED. Noise impacts can be reduced but not completely avoided by preparation and implementation of site-specific operational plans that specify measures to limit noise impacts, including: project timing to minimize public exposure, the use of sound barriers such as walls or vegetation, and proper operation and

maintenance of vehicles and equipment fitted with mufflers; proper operation and maintenance of equipment; timing of equipment transport to minimize public exposure to noise/groundborne vibration.

**Finding:** While mitigation measures can be employed to substantially lessen the noise impacts identified in a, b, d, e and f, the effects cannot be wholly avoided (i.e., reduced to less than significant levels). However, these effects are outweighed by overriding considerations (see Section VII). The available mitigation measures can and should be required by local lead and responsible agencies through their CEQA, planning, project approval and/or permitting processes.

For checklist item (c) the project will have no impact. Under CEQA, no mitigation measures are required for impacts that are less than significant, or where there is no impact. (Pub. Resources Code, Sec. 21002; CEQA Guidelines, Sec. 15091.)

#### **Checklist: XII. Population and Housing**

Population and housing impacts will be significant if they result in any of the following:

- a) Induce substantial population growth in an area, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extension of roads or other infrastructure);
- b) Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere;
- c) Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere.

Project Impacts: No impact (a, b, and c).

Mitigation: None necessary. See SED, pages 50-51.

**Finding:** Under CEQA, no mitigation measures are required for impacts that are less than significant, or where there is no impact. (Pub. Resources Code, Sec. 21002; CEQA Guidelines, Sec. 15091).

#### **Checklist: XIII. Public Services**

Public services impacts will be significant if they result in any of the following:

- a) Substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, need for new or physically altered governmental facilities, the construction of which could cause significant



environmental impacts, in order to maintain acceptable service ratios, response times or other performance objectives for any of the public services:

Fire protection

Police protection

Schools

Parks

Other public facilities

Project Impacts: No impact.

Mitigation: None necessary. See SED, page 51-52.

**Finding:** Under CEQA, no mitigation measures are required for impacts that are less than significant, or where there is no impact. (Pub. Resources Code, Sec. 21002; CEQA Guidelines, Sec. 15091).

#### **Checklist: XIV. Recreation**

The recreation impacts will be significant if they result in any of the following:

- a) Increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated;
- b) Include recreational facilities or require the construction or expansion of recreational facilities that might have an adverse physical effect on the environment.

Project impacts: Less than significant (a); No impact (b).

Mitigation: None necessary. See SED, pages 52-53.

**Finding:** Under CEQA, no mitigation measures are required for impacts that are less than significant, or where there is no impact. (Pub. Resources Code, Sec. 21002; CEQA Guidelines, Sec. 15091).

#### **Checklist: XV. Transportation/Traffic**

Transportation/traffic impacts will be significant if they result in any of the following:

- a) Cause an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections);

- b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways;
- c) Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that result in substantial safety risks;
- d) Substantially increase hazards due to a design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment);
- e) Result in inadequate emergency access;
- f) Result in inadequate parking capacity;
- g) Conflict with adopted policies, plans, or programs supporting alternative transportation (e.g., bus turnouts, bicycle racks).

Project Impacts: Potentially significant (a and b); less than significant with mitigation incorporation (d); less than significant (f); no impact (c, e and g).

Mitigation: The transportation/traffic impacts of reasonably foreseeable methods of compliance with the TMDLs and mitigation are discussed on pages 53-55 of the SED. Transportation/traffic impacts can be reduced but, in the case of (a) and (b), not completely avoided by: changing the timing of vehicle/equipment movement to avoid high traffic periods; proper design and construction of structural BMPs to avoid substantial increased roadway hazards; proper siting and design of BMPs, including additional/alternative parking.

**Finding:** While mitigation measures can be employed to substantially lessen the transportation/traffic impacts identified in a and b, the effects cannot be wholly avoided (i.e., reduced to less than significant levels). However, these effects are outweighed by overriding considerations (see Section VII). For checklist item (d), mitigation measures are available to reduce transportation/traffic impacts to less than significant levels. The available mitigation measures can and should be required by local lead and responsible agencies through their CEQA, planning, project approval and/or permitting processes.

For checklist items (c), (e), (f) and (g) the project will have a less than significant impact or no impact. Under CEQA, no mitigation measures are required for impacts that are less than significant, or where there is no impact. (Pub. Resources Code, Sec. 21002; CEQA Guidelines, Sec. 15091.)

#### **Checklist: XVI. Utilities and Service Systems**

The utilities and service systems impacts will be significant if they result in any of the following:

- a) Exceed wastewater treatment requirements of the applicable Regional Water Quality Control Board;

- b) Require or result in the construction of new water or wastewater treatment facilities or expansion of existing facilities, the construction of which could cause significant environmental effects;
- c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects;
- d) Have sufficient water supplies available to serve the project from existing entitlements and resources, or are new or expanded entitlements needed;
- e) Result in a determination by the wastewater treatment provider that serves or may serve the project that it has adequate capacity to serve the project's projected demand in addition to the provider's existing commitments;
- f) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs;
- g) Comply with federal, state, and local statutes and regulations related to solid waste.

Project Impacts: Potentially significant (c and f); Less than significant (a); No impact (b, d, e, and g).

Mitigation: The utilities and service systems impacts of reasonably foreseeable methods of compliance with the TMDLs and mitigation are discussed on pages 55-58 of the SED. Utilities and service systems impacts can be reduced but, in the case of (c) and (f), not completely avoided by: proper siting, design, construction and operation of BMPs; implementation of mitigation measures identified in the previous discussions of air quality, transportation/traffic and noise effects (measures may reduce impacts associated with BMP implementation (c), but it is unlikely that these impacts could be completely avoided; see discussions above); use of pre-project planning to anticipate land disposal needs and to assess the need for implementation of project alternatives; use of alternative BMPs, where necessary.

**Finding:** While mitigation measures can be employed to substantially lessen the utilities and service systems impacts identified in c and f, the effects cannot be wholly avoided (i.e., reduced to less than significant levels). However, these effects are outweighed by overriding considerations (see Section VII). The available mitigation measures can and should be required by local lead and responsible agencies through their CEQA, planning, project approval and/or permitting processes.

For checklist items (a), (b), (d), (e) and (g) the project will have a less than significant impact or no impact. Under CEQA, no mitigation measures are required for impacts that are less than significant, or where there is no impact. (Pub. Resources Code, Sec. 21002; CEQA Guidelines, Sec. 15091.)

## **Checklist: XVII. Mandatory Findings of Significance**

The impacts of the project will be significant if they result in any of the following:

- a) The project has the potential to degrade the quality of the environment, substantially reduce the habitat of a fish or wildlife species, cause a fish or wildlife population to drop below self-sustaining levels, threaten to eliminate a plant or animal community, reduce the number or restrict the range of a rare or endangered plant or animal or eliminate important examples of the major periods of California history or prehistory;
- b) The project has impacts that are individually limited, but cumulatively considerable. ('Cumulatively considerable' means that the incremental effects of a project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.);
- c) The project has environmental effects that will cause substantial adverse effects on human beings, either directly or indirectly.

Project Impacts: Potentially significant (a); less than significant with mitigation incorporation (b). (Less than significant (c)).

Mitigation: (a) The implementation of reasonably foreseeable methods of compliance with the proposed TMDLs could result in potentially significant environmental impacts with respect to certain Air Quality, Biological Resources, Noise, Transportation/Traffic, and Utilities and Services considerations. These impacts and mitigation measures are described in the SED on pages 28-31, 31-35, 48-50, 53-55 and 55-58, respectively. Mitigation measures are also summarized in the preceding discussion of these impacts in this Findings of Fact/Statement of Overriding Considerations document. (b) The implementation of reasonably foreseeable methods of compliance with the proposed TMDLs could result in cumulative impacts that are less than significant with mitigation incorporation (SED, p. 59).

**Finding:** While mitigation measures can be employed to substantially lessen the potentially significant impacts identified above, the effects cannot be wholly avoided (i.e., reduced to less than significant levels). However, these effects are outweighed by overriding considerations (see Section VII). The available mitigation measures can and should be required by local, regional, state and federal lead and responsible agencies through their CEQA/NEPA, planning, project approval, CWA Sec. 401 certification and/or permitting processes.

For checklist item (c) the project will have a less than significant impact. Under CEQA, no mitigation measures are required for impacts that are less than significant, or where there is no impact. (Pub. Resources Code, Sec. 21002; CEQA Guidelines, Sec. 15091.)

## **VI. Alternatives Analysis and Findings**

Where the Regional Board has determined that, even after the adoption of all feasible mitigation measures, the implementation of the proposed organochlorine compounds TMDLs will still cause one or more significant environmental effects that cannot be substantially lessened or avoided, the Regional Board, prior to approving the TMDLs, must first determine whether, with respect to such impacts, there remain any project alternatives that are both environmentally superior and feasible within the meaning of CEQA. An alternative may be "infeasible" if it fails to fully promote the Regional Board's underlying goals and objectives with respect to the TMDLs, or if the alternative does not comply with applicable law or regulation.

As described in Section V of this document and the SED for the TMDLs, most of the significant environmental effects of the reasonably foreseeable methods of compliance with the TMDLs can be lessened to less than significant levels through the imposition of mitigation requirements by local, regional, state or federal agencies. However, in certain cases, the environmental effects remain potentially significant. The following are the potentially significant impacts of the implementation of reasonably foreseeable methods of compliance with the organochlorine compounds TMDLs:

### **Checklist: III. Air Quality, a, b, c and d, as shown below.**

- a) Conflict with or obstruct implementation of the applicable air quality plan;
- b) Violate any air quality standard or contribute substantially to an existing or projected air quality violation;
- c) Result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard (including releasing emissions which exceed quantitative thresholds for ozone precursors);
- d) Expose sensitive receptors to substantial pollutant concentrations;

**Checklist: IV. Biological Resources a.** Have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.

(Note: as described in the SED, page 31-33 and Section V. Significant Effects and Mitigation Measures, Checklist IV. Biological Resources, page 7-8, above, mitigation measures are available to substantially lessen the impacts of reasonably foreseeable methods of compliance on special status species.

However, the potential for adverse impacts on these species necessitates a finding of potentially significant impact.)

**Checklist: XI. Noise, a, b, d, e and f, as shown below.**

- a) Exposure of persons to or generation of noise levels in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies;
- b) Exposure of persons to or generation of excessive groundborne vibration or groundborne noise levels;
- d) A substantial temporary or periodic increase in ambient noise levels in the project vicinity above levels existing without the project;
- e) For a project located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, the project would expose people residing or working in the project area to excessive noise levels;
- f) For a project within the vicinity of a private airstrip, the project would expose people residing or working in the project area to excessive noise levels.

**Checklist: XV. Transportation/Traffic, a and b, as shown below.**

- a) Cause an increase in traffic that is substantial in relation to the existing traffic load and capacity of the street system (i.e., result in a substantial increase in either the number of vehicle trips, the volume to capacity ratio on roads, or congestion at intersections);
- b) Exceed, either individually or cumulatively, a level of service standard established by the county congestion management agency for designated roads or highways.

**Checklist: XVI. Utilities and Service Systems c and f, as shown below.**

- c) Require or result in the construction of new storm water drainage facilities or expansion of existing facilities, the construction of which could cause significant environmental effects;
- g) Be served by a landfill with sufficient permitted capacity to accommodate the project's solid waste disposal needs.

The Regional Board considered a number of alternatives to the recommended TMDLs to determine whether: (1) an environmentally superior alternative is available; and, (2) whether an environmentally superior alternative, if available, would meet the objective of the TMDLs to achieve water quality standards; and, (3) whether an environmentally superior alternative that meets the TMDL objective would be legally feasible. A detailed analysis of alternatives to the

proposed TMDLs is provided in the SED on pages 62-71. Based on that analysis, the Regional Board concludes that:

- A. The No Project Alternative (i.e., the Regional Board would not adopt and implement the recommended TMDLs; see SED, section 7.1) is not environmentally superior. In the absence of Regional Board adopted TMDLs that are approved by the state (State Board and the Office of Administrative Law) and the U.S. EPA, the Regional Board is required to implement the organochlorine compounds TMDLs already established by the U.S. EPA (see SED, Sec. 3.2 Regulatory Setting). The implementation of the U.S. EPA TMDLs would have environmental effects comparable to those of the Regional Board staff recommended TMDLs. The No Project Alternative may result in greater environmental effects since there would be no allowance for a compliance schedule to implement the U.S. EPA's TMDLs, nor would there be the explicit opportunity for the coordinated and comprehensive approach to resolve water quality standards concerns affecting Newport Bay and its tributaries that is afforded by the implementation plan recommended by Regional Board staff.
- B. The alternative to adopt a Basin Plan amendment to incorporate the U.S. EPA organochlorine compounds TMDLs unchanged and to add a plan to implement those TMDLs is not legally feasible (and, in any case, is not environmentally superior). (See SED, section 7.2.) The U.S. EPA organochlorine compounds TMDLs do not implement established regulations for Newport Bay and its watershed, as expressed in the Sediment TMDL for these waters. The Sediment TMDL is incorporated in the Basin Plan and must be implemented.
- C. Use of alternative guidelines for evaluating water quality standards impairment (SED, section 7.3.1) could result in recommendations for delisting from the CWA Sec. 303(d) list one or more of the organochlorine compounds for which TMDLs are now recommended by Regional Board staff. TMDLs would not be required for the delisted compound(s), thereby eliminating the potential environmental effects resulting from implementation of TMDLs for these substances. However, an approved delisting is necessary to obviate the need for some or all of the TMDLs; use of alternative evaluation guidelines in the impairment assessment alone would not suffice to reduce or eliminate the potential environmental effects of the recommended TMDLs. The waterbody-pollutant combinations for which Regional Board staff recommends TMDLs are included in the 2004-2006 CWA Sec. 303(d) list; TMDLs for these waterbody-pollutant combinations are now legally required.

Use of alternative impairment evaluation guidelines suggested by certain stakeholders during the development of the recommended organochlorine compounds TMDLs is not legally feasible since the suggested guidelines

have not been subject to scientific peer review and thus do not comport with the State Board's Water Quality Control Policy for Developing California's Clean Water Act Section 303(d) List (September 2004)(Listing Policy). In any case, application of alternative evaluation guidelines alone would not be sufficient to effect changes in the set of TMDLs required pursuant to federal law and regulation, as described in the preceding paragraph.

- D. Use of alternative numeric targets to develop the TMDLs (SED, section 7.3.2) could result in less stringent TMDLs, requiring reduced implementation of control measures to achieve the TMDLs. Therefore, less stringent numeric targets may be associated with reduced potential environmental effects. The targets used by Regional Board staff as the basis for development of the recommended TMDLs are scientifically defensible, have been peer reviewed (consistent with the State Listing Policy), and will assure that the objective of the TMDLs to achieve water quality standards will be met. Alternative numeric targets recommended by certain stakeholders were rejected because they have not been peer reviewed and/or do not assure that the objective of the TMDLs will be met. TMDLs based on the stakeholders' recommended alternative numeric targets would therefore not likely be approved by the U.S. EPA.<sup>3</sup> Absent the adoption of recommended TMDLs by the state and their approval by the U.S. EPA, the Regional Board would be required to implement the established U.S. EPA TMDLs. The relative environmental effect of this alternative is discussed in "A", above.
- E. A variety of permutations and combinations of tasks and schedules necessary to implement the TMDLs was considered, including: (1) withholding action on the TMDLs pending resolution of technical uncertainties; (2) specifying a longer compliance schedule in the implementation plan; (3) specifying a shorter (or no) compliance schedule in the implementation plan.

Withholding action to adopt the recommended TMDLs would require the Regional Board to implement the established U.S. EPA TMDLs. The environmental effect of this alternative is comparable to or greater than that of the recommended TMDLs (see discussion in "A", above).

Specifying a longer compliance schedule may allow resolution of technical uncertainties that might affect the stringency of and even need for TMDLs.

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<sup>3</sup> Cognizant of existing controversy regarding the appropriate numeric targets and the recommendations of certain stakeholders for alternative targets, USEPA staff (Cindy Lin) commented on Regional Board staff's proposed TMDLs and, specifically, the numeric targets, at the December 1, 2006 workshop. Ms. Lin stated that the proposed TMDLs "include the best available science, and that the numeric targets "are appropriate numeric values...they should achieve the TMDL goals". Separate discussions between Ms. Lin and Regional Board staff during the development of the proposed TMDLs confirmed USEPA's discomfort with the alternative target recommendations, since the alternatives recommended had not been subject to peer review and would not assure the protection of beneficial uses.



Less stringent TMDLs, or elimination of certain TMDLs, would likely result in reduced environmental effects since BMP implementation requirements would be reduced or eliminated. However, TMDLs with an extended compliance schedule are not likely to be approved by the U.S. EPA<sup>4</sup>. In that case, the Regional Board would be required to implement the established U.S. EPA TMDLs. The environmental effect of this alternative is comparable to or greater than that of the recommended TMDLs (see discussion in “A”, above).

The potential environmental effects of an immediate compliance schedule or a schedule shorter than that proposed would likely be more severe, given that there would not be an allowance of time to consider appropriate control actions and to integrate them with control actions necessary to achieve other TMDLs and waste discharge requirements. The implementation plan recommended by Regional Board staff allows for integration of control measures to address multiple sources of impairment. This should reduce the overall environmental impact of multiple control measures implemented individually, and should provide more effective, timely and resource-efficient control of water quality standards impairment in the watershed.

The schedules identified in the recommended implementation plan provide a reasonable period for responsible parties to implement the tasks identified in the implementation plan, and to identify the need for modification of the TMDLs (and/or implementation plan). The recommended implementation plan allows stakeholders, including the Regional Board to address water quality standards problems in a coordinated and comprehensive manner that is expected to be more effective, timely, and resource-efficient. Further, the comprehensive and coordinated approach should reduce the cumulative environmental effects of independent implementation of control measures to meet separate permit and/or other TMDL requirements. The recommended implementation plan also provides stakeholder flexibility in identifying and implementing control measures that minimize environmental impacts and/or in providing requisite mitigation on a case-specific basis.

- F. No environmentally superior, legally feasible alternative that meets the objective of the TMDLs to achieve water quality standards (as required by the Clean Water Act and implementing regulations) has been identified. The recommended TMDLs take a phased approach specifically intended to allow for further investigation, resolution of technical uncertainties and future refinement of the TMDLs as warranted. The effect of this approach, coupled with coordinated implementation of other TMDL/permit requirements, should

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<sup>4</sup> USEPA staff (Cindy Lin) expressed concern with a compliance schedule that extends beyond that proposed in the TMDLs (December 31, 2015) in a telephone conversation with Regional Board staff on July 3, 2007.

be to minimize potentially significant adverse environmental impacts of the implementation of the TMDLs.

## **VII. Statement of Overriding Considerations**

The potentially significant environmental impacts of the recommended organochlorine compounds TMDLs are listed in Section VI, above. Findings and mitigation measures that would lessen these environmental impacts, though likely not to levels of insignificance, are presented in Section V, above. These impacts/mitigation measures are also described in detail in the July 25, 2007 SED, Sections 5 and 6. The project benefits outweigh these environmental effects as follows:

- A. Per the California Water Code, the recommended TMDLs include an implementation plan that specifies the actions that must be taken to achieve the TMDLs, with appropriate compliance schedules. Absent the recommended TMDLs and implementation plan, the Regional Board is required to implement the organochlorine compounds TMDLs established by the U.S. EPA in 2002, which do not include an implementation plan or compliance schedules. Since no schedules are specified in the U.S. EPA TMDLs, Regional Board permits issued to implement those TMDLs cannot legally provide compliance schedules: immediate compliance must be required. Implementation of the recommended TMDLs, relying on the accompanying implementation plan, rather than the U.S. EPA TMDLs, has the significant benefit of avoiding or reducing the following adverse effects:
  - a. Regional Board requirements for immediate compliance pursuant to the U.S. EPA TMDLs would likely necessitate permit enforcement orders (e.g., cease and desist orders), which would take additional Regional Board staff resources to develop, justify and enforce. To the extent that Regional Board resources must be diverted in this manner, action on other pressing water quality issues would be delayed.
  - b. Implementation of the U.S. EPA TMDLs without a defined and approved implementation plan would require application of Best Professional Judgment by the Regional Board to identify permit terms and conditions that implement the TMDLs, as well as other established and relevant regulations, e.g., the Sediment TMDL for the Newport Bay/San Diego Creek watershed. Application of Best Professional Judgment, rather than reliance on a well-defined and approved implementation plan, would likely result in increased time and effort in preparing and defending recommended permit limitations. This could have the effect of delaying needed actions to implement the TMDLs, and could divert the Regional Board and

Regional Board staff from work necessary to address other pressing water quality issues.

- B. Implementation of the Board staff-recommended TMDLs, relying on the accompanying implementation plan, rather than the U.S. EPA TMDLs, also has the following significant benefit. The Board staff recommended TMDLs will be implemented in a phased manner, with a compliance schedule that provides time for control actions to be deployed and for review and revision of the TMDLs, if found necessary. Future refinement of the TMDLs may lead to a revised implementation plan that obviates the need for one or more control actions, with resultant reductions in potential adverse environmental effects and resource expenditures by the responsible dischargers. The Board staff recommended implementation plan also allows the watershed stakeholders to implement a coordinated and comprehensive strategy to address the requirements of the recommended TMDLs and other established TMDLs and/or permits. The net effect of the phased, coordinated and comprehensive implementation approach should be a reduction in the potential cumulative environmental effects of the implementation of control measures to respond to TMDLs/permits on an individual basis. Further, this approach should provide a timelier, more effective and more resource-efficient method of achieving and maintaining water quality standards. In contrast, implementation of the U.S. EPA TMDLs, which do not include an implementation plan or compliance schedule, would likely forego opportunities for coordinated and comprehensive control actions. This would result in less efficient and timely correction of existing water quality standards impairments in the subject waterbodies due to multiple pollutants, as well as greater resource expenditures and environmental effects associated with the implementation of control actions intended to address each source of impairment independently.
- C. In the absence of the Board staff-recommended TMDLs (i.e., the No Project Alternative), implementation of the U.S. EPA organochlorine compounds TMDLs would be required. The adverse environmental impacts from the Board staff-recommended would be equivalent to or less severe than the impacts from the U.S. EPA TMDLs.
- D. Assessments conducted by both Regional Board and State Board staff found that use of San Diego Creek and Upper and Lower Newport Bay by aquatic life, wildlife (including birds) and by fishermen is impaired or threatened by one or more organochlorine compounds as the result of bioaccumulation of these substances in animal tissue that may be consumed by wildlife predator species and/or humans. Implementation of the Board staff recommended organochlorine compounds TMDLs will correct this water quality standards impairment of the covered

waterbodies, thereby protecting public health and the biota. Implementation of the U.S. EPA organochlorine compounds TMDLs would likewise correct water quality standards impairment due to organochlorine compounds but would not provide for integrated, and therefore more efficient and timely, control of multiple pollutants causing water quality standards impairment in the waterbodies addressed by the TMDLs, with implementation plan, recommended by Board staff.